

9217 Canyon Mesa Dr.  
Las Vegas, NV 89144

January 21, 2010

Honorable Robert D. Drain, United States Bankruptcy Judge  
United States Bankruptcy Court for the Southern District of New York  
One Bowling Green, Room 632  
New York, NY 10004

Your Honor:

Enclosed is "**Amended Response**" to the Thirtieth Omnibus Claims Objection" filed by Delphi Corporation Chapter 11, Case No. 05-44481 (RDD) based on claim #5368 for Anthony N. Gardner. The "**Amended Response**" requests a correction/adjustment to the Modified Settlement Amount. Copies have also been sent to Delphi Corporation and their legal council. Any concerns or questions should be addressed to Mr. Gardner at the above noted address.

Respectfully,



Anthony N. Gardner

FILED  
U.S. BANKRUPTCY COURT  
2010 JAN 28 A 8:16  
S.D.N.Y.

Response (Amended January 20 ,2010)

Claim # 5368

In regards to:

Delphi Corporation, Chapter 11, Case No. 05-44481 (RDD)  
Thirtieth Omnibus Claims Objection

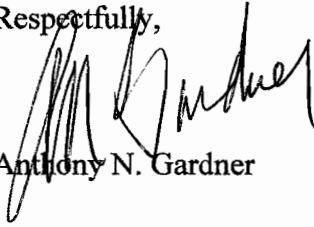
This is an **amended** official response to the Delphi Corporation Chapter 11, Case 05-44481 (RDD), Thirtieth Omnibus Claims Objection on behalf of Mr. Anthony N. Gardner (claim # 5368). In general this response seeks to correct the "Modified Amount" of \$580,203.73 (shown in Exhibit A, "Notice of Objection to Claims" document, dated June 27, 2008, page 2). The corrected amount should be \$800,000.00. The details of this correction are as follows:

- (i.) Claims Objection "Thirtieth Omnibus Claims Objection"
- (ii.) Claim # 5368 for Mr. Anthony N. Gardner based on Supplemental Executive Retirement Program obligation
- (iii.) The Modified claim amount of \$580,203.73 should be corrected to the agreed to amount of \$800,000.00 by Delphi Salary Personnel Director Debra Alexander and Attorney Lisa Diaz of the firm Skadden, Arps, Slate, Meagher & Flom LLP representing Delphi. This was the agreed to amount as evidenced by email dated March 24, 2008 in exhibit B. Delphi originally calculated a proposed claim settlement based on standard data such as actuary tables and select published interest rates to produce a net present value. Although this may be numerically correct it is no more accurate than the underlying assumptions on mortality and interest rates. I believe that this understates the true value. In order to determine the true current value, I selected three major insurance companies that provide annuities, to do a market test (**two responded**). The average premium and fees of the three insurance companies to provide an equivalent income to the current one, was about a \$800,000.00. I believe that this is more representative of the true market value and replacement cost. Using this data, I held several conference calls in March 2008 with the above mention Delphi parties and reached an agreement of the stated amount of \$800,000.00.
- (iv.) **Exhibit C shows the calculation sheet that was used for discussions with Delphi Personal and Counsel. It should be noted that the figure of \$800,000 would not fully cover the cost of the annuity (producing an equivalent after tax monthly income) when estimated taxes on the lump sum is paid.**
- (v.) **Exhibits D& E are the annuity quotes provided by the insurers.**
- (vi.) Proof of general claim has already been established.
- (vii.) Total "corrected" Modified Claim amount of \$800,000.00
- (viii.) Address of Claimant: (unchanged) 9217 Canyon Mesa Dr., Las Vegas, NV 89144

FILED  
U.S. BANKRUPTCY COURT  
S.D. TX.  
JAN 28 AM 10:16

Any questions on the above response to the Delphi objection to claim may be addressed to the location identified in section (vi.) or my home phone (702) 869-3338. Please note that we are in the Pacific Time Zone for any calls.

Respectfully,

A handwritten signature in black ink, appearing to read "Anthony N. Gardner", written over the printed name.

Anthony N. Gardner

EXHIBIT 'B'



your friend in the desert

Current Location: Las Vegas

Web Cox.net

CHANNELS

- Home
- News
- Weather
- Money
- Sports
- Entertainment
- Movies
- Television
- Features
- Autos
- Jobs
- Kudzu.com
- Search

WebMail: 5: Inbox

Read Message

Move to: Drafts

From: jang5@cox.net  
Date: Monday, April 7, 2008 12:46 PM  
To: ldiaz@skadden.com  
Cc: debra.alexander@delphi.com  
Subject: Delphi Settlement Cap  
Size: 2 KB

Lisa:

I finally got your message on the proposed cap of \$800K. I had been out of state since Thursday morning and received some of the voice mails but not the recording on my home phone. I know that you and Debbie Alexander were anxious to receive confirmation of the cap amount because Delphi was to announce exiting bankruptcy on Friday. However, I was notified Friday morning that the deal fell through so I held off on any communications. I am now back in town (Las Vegas) and can receive all types of communications. Since there appears to be more time now, I believe that we should just complete an actual agreement rather than a patch work cap. Please call or write as soon as possible with your settlement offer. I have already provided data on what I believe is fair. If you have any questions fee free to call or email.

Regards,

Tony Gardner

Move to: Drafts

TV Account

WebMail

- Inbox
- Drafts
- Sent Mail
- Hold Mail
- Spam
- Trash
- Manage Folders
- Internet Tools
- Phone Tools
- View/Pay Bill
- Customer Support
- Order Services

Cox Offers

- For Your Home
- For Your Business
- Special Offers

Online Services

- > Travel by Expedia
- > Mortgage Center
- > 2008 Credit Report
- > Auto Insurance
- > Home Improvement
- > HDTVs & More
- > Hot Gadget Deals

You are using 1% of 2 GB

Prev Next

Prev Next

**Calculation Sheet for Equivalent Annuity  
to Delphi SERP Program for Anthony Gardner**

**4-Aug-08**

Current Funds received \$ 4,501.07 Gross  
from Delphi \$ 3,983.00 Net (after taxes)  
  
\$ 518.07 Total Tax per month (current)

Annuity would be taxed at approximately half that rate over its life  
\$ 259.04 Annuity tax per month (approx.)

Annuity gross payout per month = Current net after tax plus annuity level tax (approx.)  
\$ 4,242.04 Gross distribution from annuity per month  
  
\$ 50,904.42 Gross distribution from an annuity per year

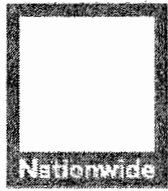
Cost of a whole life annuity (JLA) with survivor benefit of 65% annuity for spouse

Quote 1.)	Nation Wide	\$ 742,630.57
Quote 2.)	Genwr	\$ 766,729.27

Average of quotes \$ 754,679.92 Average Annuity cost

Gross up of funds from Delphi to purchase annuity assuming distribution IRS tax rate of 35%

Gross = Average of quotes/(100%-35%) = \$ 1,161,046.03



# Nationwide®

## On Your Side

### Investments Retirement Insurance

August 4, 2008

Valued Client

RE: Quote # 100281949

Dear Valued Client,

We appreciate the opportunity to provide financial solutions to you through our offering of The Best of America® America's INCOME Annuity® (AIA), an immediate variable annuity. An immediate annuity is a contract with an insurance company that provides immediate regular payments in exchange for a lump-sum investment. These payments are guaranteed to last for life or a specified period of time.

The enclosed quote results are based on the listed quoting assumptions, your age as of the income start date, and current purchase rates. Please note that all guarantees and protections discussed in this letter are subject to the claims-paying ability of Nationwide Life Insurance Company.

#### Fixed Annuity Benefit:

**The fixed purchase rate used to calculate your fixed benefit is guaranteed only if your entire deposit is received by August 7, 2008 and an AIA prospectus is presented with this quote.** The fixed portion of your payment is guaranteed, subject to the claims-paying ability of Nationwide Life Insurance Company, and will not change unless the terms of the annuity income option you selected state otherwise.

#### Additional Available Riders or Features:

Selecting the America's INCOME Annuity Income Foundation<sup>SM</sup> ("AIA Income Foundation") rider guarantees that your variable payment will never decrease below the guaranteed variable annuity payment (GVAP) due to the performance of the underlying investment options. With the AIA Income Foundation rider you can choose either the Level Guarantee Option or the Step-up Guarantee Option. Please note that this rider is available with America's INCOME Annuity for an additional cost of 1.00% and that not all underlying investment options, available at the contract level, are available with this rider. In addition, the GVAP amount will be reduced proportionally if you incur a redemption fee, make a variable-to-fixed transfer or take an unscheduled withdrawal.

If you select the **Level Guarantee Option**, your GVAP amount will be equal to 85% of the first variable annuity payment projected on the contract issue date. Once the GVAP amount is established, it will remain in effect throughout the life of the contract and will not change due to the performance of your underlying investment options.

If you select the **Step-up Guarantee Option**, Nationwide® guarantees your GVAP will be equal to 75% of the first variable annuity payment projected on the contract issue date. On each income start date anniversary, your GVAP amount may increase, if 75% of the calculated variable annuity payment is greater than the previous GVAP amount.

More information regarding how these benefits are calculated is available in the prospectus.

EXHIBIT D  
20F3

We will mail statements directly to you each quarter, which will provide details such as total payments received, investment option performance, and the status of any other financial transactions.

If we can be of any further service to you, please don't hesitate to contact your Income Products Customer Service Center toll-free at 800-452-7126 between the hours of 8:00am and 6:00pm ET, Monday through Friday.

Thank you for your interest.

Sincerely,

Nationwide Income Products Service Center

Note: this quote does not guarantee that Nationwide will issue a contract. For applications over \$1 million, Nationwide will require the prospective contract owner to submit a completed Immediate Annuity Large Case Questionnaire for approval prior to contract issue.

EXHIBIT D  
30F3

The Best of America® America's INCOME Annuity® quote # 100281949 prepared for Valued Client & Mrs Client on August 4, 2008.

<b>Annuitant information</b>			
Last name:	Client	First name:	Valued
Age at income start date:	61	Gender:	M
<b>Joint/survivor information</b>			
Last name:	Client	First name:	Mrs
Age at income start date:	62	Gender:	F
<b>Assumptions</b>			
Quote expiration date:	August 7, 2008	Contract qualification:	Qualified
Product:	America's INCOME Annuity	Issue state:	NV
Income start date:	September 1, 2008	Residence state:	NV
Payment frequency:	Monthly	Premium tax rate: *	0.0 %

\* Please note that Premium Tax is based upon the Residence State of the Owner at the issue of the policy.

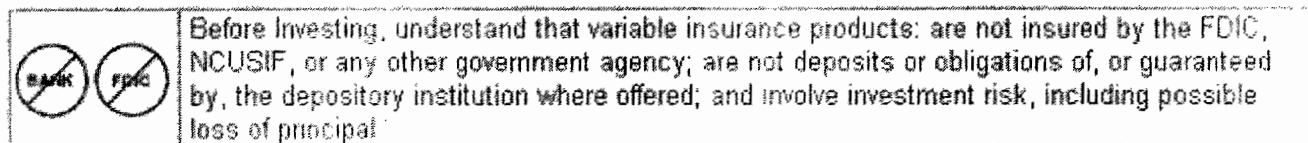
The following results show the purchase amount required to generate your requested payment amount(s).

Option description:	<b>JOINT AND 75% LAST</b>		
Gross payment:	<b>\$4,250.00</b>	<b>Results</b>	
Fixed percent:	<b>100%</b>	Fixed purchase:	Variable purchase:
Total purchase allocated to fixed:	<b>100%</b>		Annual exclusion amount:
ABL:	<b>No</b>	<b>\$742,630.57</b>	<b>\$0.00</b>
AIR:	<b>3.5%</b>		<b>\$0.00</b>

Please keep in mind the following before investing:

- Annuities have limitations and investing involves market risk, including possible loss of principal
- Variable annuities are long-term investment vehicles designed for retirement purposes
- All individuals selling variable annuities must be licensed insurance agents and registered representatives
- All guarantees and protections are subject to the claims-paying ability of Nationwide Life Insurance Company

This quote must be accompanied by a prospectus. Both the product prospectus and underlying fund prospectus can be obtained from your investment professional or by writing to Nationwide Life Insurance Company, P.O. Box 182021, Columbus, OH 43218-2021. Before investing, carefully consider the fund's investment objectives, risks, charges and expenses. The product prospectus and underlying fund prospectus contain this and other important information. Read the prospectus carefully before investing.







**Genworth**  
Financial

**An illustration using:**

**SecureLiving<sup>®</sup> Income Provider**  
Single Premium Immediate Annuity

For people who want guaranteed income that:

- Can last a lifetime or for a specified period of time
- Can be fixed or can increase over time
- Can be tax-advantaged
- Can provide a level of flexibility and control in the event of unforeseen financial needs
- Can be used to pay living or other expenses, be left to beneficiaries, or even given as a financial gift.

**Issued by Genworth Life and Annuity Insurance Company**  
700 Main Street  
Lynchburg, VA 24505-1412

Genworth Life is a Genworth Financial company

**Prepared for:**  
Anthony Gardner

**Prepared by:**  
Kevin Huntsman

EXHIBIT E  
20F2  
**Genworth Life and Annuity**  
SecureLiving® Income Provider

## Single Premium Immediate Annuity Quote

Prepared for <b>Anthony Gardner, Male, born 12/11/1946, age 62 &amp; Janice Gardner, Female, born 7/2/1946, age 62</b>				State <b>Nevada</b>
Cost Basis <b>Single Premium</b>	Tax Status <b>Non-Qualified Account</b>	Quote Date <b>8/4/2008</b>	Purchase Date <b>8/11/2008</b>	Expiration Date <b>8/11/2008</b>

Illustrated with rates effective as of 7/28/2008. If quoting after 8/4/2008, please ensure that rates are current.

Single Premium	Income Payment	Income Start Date	Tax Details		Confirmation #
1. For Anthony Gardner & Janice Gardner: Annually for 16 years installment refund and as long thereafter as both annuitants shall live, reducing to 67.00% after the installment period if only one annuitant is living at or after that time.					
\$766,729.27	\$51,000.00	9/11/2008	Taxable Portion:	\$20,655.00 40.5%	#4012066-1
			Non-Taxable Portion:	\$30,345.00 59.5%	

Rates are subject to change without notice. To ensure timely issuance of the contract, please submit a copy of this quote with the immediate annuity application. Please note, we aggregate multiple contracts for the same annuitant. This may affect the final determination of your income benefits or premium costs.

The instructions on the last page are an integral part of the illustration; please read them carefully.